IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 323 OF 2002

IN

SUM.SUIT NO. 148 OF 2002

Vijay Engineering
& Marhinery Co. .. Plaintiffs

vs.

C.M.E. Industries Ltd., .. Defendants.

Mr. N.S. Fadia for the plaintiffs.
Mr. M.S. Doctor a/w. Nouruddin Dhillow a/w
Mr. Siddharth Kanakia i/by
Hariani & Co. for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 26th SEPTEMBER, 2005.

P.C.

. The learned counsel for the defendant submits that the suit is barred by law of limitation. The learned counsel for the plaintiff however contends that the suit is not barred by limitation as there are various part payments. However, with the affidavit in reply which has been filed the receipt has been produced of the said past payment which has been issued by the plaintiffs themselves indicating that the said payment of Rs.

1,50,000/- is paid against invoice no. 020121 dated 10.6.1998. The plaintiff however has while filing the suit instead of adjusting the said amount against the said invoice has adjusted the amount of Rs. 1,50,000/- against various invoices by dividing the said single payment in parts. It is now settled law that once a tender of payment is against a particular debt then it has to be adjusted against only the said debt. Thus in my opinion triable issues arise in the present case. The summons for judgment is dismissed. In that view of the matter, unconditional leave to defend.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.